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SENATE

} REPORT
No. 568

SENATOR FROM ALABAMA

APRIL 18, 1932.—Ordered to be printed

Mr. GEORGE and Mr. BRATTON, from the Committee on Privileges and Elections, submitted the following

REPORT

[To accompany S. Res. 199]

The Committee on Privileges and Elections, acting under Senate Resolutions 467 and 485, relating to the contest of J. Thomas Heflin versus John H. Bankhead for a seat in the United States Senate from the State of Alabama, having fully considered the evidence submitted and the questions of law presented, report that the contestee, John H. Bankhead, was duly elected a Senator from the State of Alabama in the election held November 4, 1930, and is entitled to his seat. We present herewith the views of the minority of the subcommittee having the case under consideration for the information of the Senate, a majority of the full committee agreeing to the recommendations therein made to the full committee.

MINORITY VIEWS

[Pursuant to S. Res. 467 and 485]

One ground of the contest in this matter is that the Democratic primary, in which contestee was nominated for the office of United States Senator, was illegal; that by reason of this illegality there was in law no primary and no nominee; and, therefore, that Mr. Bankhead's name was unlawfully on the ticket in the general election as the nominee of the Democratic Party; that no ballots cast for him, for that reason, should be counted. The majority of the subcommittee report that the primary was illegal but do not undertake to determine the result upon the general election of its finding that the primary was illegal.

The majority of the subcommittee report that the primary was illegal, report that the irregularities in the election were so numerous that no one could say fraud was not committed, and recommend that the Senate be advised that, in the judgment of the subcommittee, there was no election for United States Senator in Alabama in 1930.

The contention as to the illegality of the primary grows out of the fact that a resolution of the State Democratic committee, calling the primary, fixed as one of the qualifications for candidates a test of

party loyalty in the preceding presidential election but did not fix this test for voters in that primary.

It is admitted that under section 672 of the Code of Alabama for 1923 the committee had the power to fix the qualifications for candidates which it adopted, but it is contended that under the provisions of section 612 of the code these qualifications became automatically the qualifications for voters and that the attempt to fix qualifications for voters differing from those fixed for candidates was beyond the power of the committee and resulted in invalidating the whole primary.

After the resolution of the committee in question a bill was filed by a taxpayer in an equity court of Alabama seeking to enjoin the payment of public money for holding the primary on the ground that the action of the committee in fixing qualifications for voters which differed from those fixed for candidates destroyed the legality of the primary. The lower court and the Supreme Court declined to take jurisdiction of this bill on the ground that it did not present matter within the equitable cognizance of the court. *Wilkinson v. Henry* (211 Ala. 254, 128 So. 362).

The Chilton County Republican executive committee called a primary election to be held "with the State primary election on August 12, 1930." In the call resolution all qualified voters, regardless of past party affiliations and who believe in the principles of the Republican Party and pledge themselves to support the nominees of such party in the primary, were invited to participate. But as to one desiring to become a candidate there was an additional requirement that he state "under oath how he or she voted in the last general election of 1928; that is, whether said proposed candidate supported the Republican ticket or the Democratic ticket, or voted a split ticket." This oath was required to be filed with the chairman and kept on file, open to inspection, as well as published in a newspaper published in said county. M. F. Lett desired to become a candidate in said primary for the office of member of the board of education of Chilton County, and complied with all requirements of said executive committee as to such candidacy save one. He declined to make the oath above outlined. For his declination to conform to this requirement the chairman refused to certify his name as a candidate for said office, and a mandamus proceeding was resorted to for the purpose of compelling such certification.

On appeal, the Supreme Court of Alabama said in part:

We, therefore, conclude that the committee acted well within its authority, as expressly recognized by section 672 of the code, in prescribing the test oath of party loyalty, and that its action is not subject to the criticism that it was arbitrary or unreasonable.

Lett also attempted to raise the question as to the right of the committee to fix differing qualifications for candidates and voters. As to this contention, the court said:

It is further suggested that under section 612 of the code the qualification of the voter is automatically fixed the same as the candidate, and that the resolution in question is violative thereof. But that section is not in any manner here involved and a consideration of this insistence as to its proper construction is unnecessary. Petitioner seeks relief as a candidate and not otherwise. Any matter affecting those not candidates would in no wise alter petitioner's status. We have concluded the standard of qualification for the candidate is properly and legally fixed by the resolution, and petitioner's

Due to length of report, only an excerpt is presented. -- Senate Historical Office